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McCoy v. Miner

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 06-4599

REGGIE L. MCCOY

v.

WARDEN JOHNATHAN C. MINER
ATTORNEY GENERAL OF THE UNITED STATES

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civil No. 06-cv-01831)
District Judge: Honorable William W. Caldwell

Submitted For Possible Summary Action
Under Third Circuit LAR 27.4 and I.O.P. 10.6
April 5, 2007

Before: BARRY, AMBRO and FISHER, Circuit Judges

(Filed: April 24, 2006)

OPINION

PER CURIAM

Reggie L. McCoy, an inmate at United States Penitentiary in Allenwood, Pennsylvania, was convicted in the Middle District of Florida on two counts of conspiracy to possess and attempted possession of narcotics. After failing at multiple

attempts to obtain relief within the Eleventh Circuit, McCoy filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in the District Court for the Middle District of Pennsylvania challenging the indictment and the use of prior convictions for sentencing enhancement. The District Court dismissed the petition for lack of jurisdiction. Appellees have filed a motion for summary action, and McCoy filed an opposition to summary action.

We agree with the District Court, for the reasons stated in its opinion dated October 24, 2006, that McCoy is challenging his conviction and thus may not proceed under 28 U.S.C. § 2241. See 28 U.S.C. § 2255; Okereke v. United States, 307 F.3d 117, 120 (3d Cir. 2002); see also United States v. Cotton, 535 U.S. 625, 630-31 (2002) (holding that indictment defects are not jurisdictional).

Accordingly, as there is no substantial question presented by this appeal, we will summarily affirm. Third Circuit LAR 27.4; Third Circuit I.O.P. 10.6. McCoy's motion for a temporary restraining order and "application for enforcement of an order to answer" dated November 7, 2006 are denied as moot. McCoy's "application for enforcement of an order answer" dated December 19, 2006 is denied as there is no appeal of his inmate custody classification before the Court.